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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H 2007 433

MARCIA ANNE SIERRA
4617 New Hope Lane
Salida, California 95368

STATEMENT OF ISSUES

Applicant/Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about July 11, 2007, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a respiratory care practitioner license from Marcia Anne Sierra (Applicant/Respondent). On or about July 10, 2007, Marcia Anne Sierra certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on November 20, 2007.

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).

19 7. Section 3732 of the Code states:

20 “(a) The board shall investigate an applicant for a license, before a license is
21 issued, in order to determine whether or not the applicant has the qualifications required
22 by this chapter.

23 “(b) The board may deny an application, or may order the issuance of a
24 license with terms and conditions, for any of the causes specified in this chapter for
25 suspension or revocation of a license, including, but not limited to, those causes
26 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761.”

27 8. Section 3752 of the Code states:

28 “A plea or verdict of guilty or a conviction following a plea of nolo

1 contendere made to a charge of any offense which substantially relates to the
2 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
3 a conviction within the meaning of this article. The board shall order the license
4 suspended or revoked, or may decline to issue a license, when the time for appeal
5 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
6 order granting probation is made suspending the imposition of sentence,
7 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
8 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
9 setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment.”

11 9. California Code of Regulations, title 16, section 1399.370, states:

12 “For the purposes of denial, suspension, or revocation of a license, a crime
13 or act shall be considered to be substantially related to the qualifications, functions
14 or duties of a respiratory care practitioner, if it evidences present or potential
15 unfitness of a licensee to perform the functions authorized by his or her license or
16 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
17 acts shall include but not be limited to those involving the following:

18 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
19 abetting the violation of or conspiring to violate any provision or term of the Act.

20 “(c) Conviction of a crime involving driving under the influence or reckless
21 driving while under the influence.

22 COST RECOVERY

23 10. Section 3753.5, subdivision (a) of the Code states:

24 "In any order issued in resolution of a disciplinary proceeding before the
25 board, the board or the administrative law judge may direct any practitioner or applicant
26 found to have committed a violation or violations of law to pay to the board a sum not to
27 exceed the costs of the investigation and prosecution of the case."

28 11. Section 3753.7 of the Code states:

1 "For purposes of the Respiratory Care Practice Act, costs of prosecution
2 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
3 other administrative, filing, and service fees."

4 12. Section 3753.1 of the Code states:

5 "(a) An administrative disciplinary decision imposing terms of probation
6 may include, among other things, a requirement that the licensee-probationer pay the
7 monetary costs associated with monitoring the probation. "

8 FIRST CAUSE FOR DENIAL OF APPLICATION

9 (Substantially related convictions)

10 13. Respondent's application is subject to denial under sections 3750(d),
11 3750(g), 3752, and CCR 1399.370 (a) and (c) in that she has three alcohol-related
12 convictions in 1996, 2001 and 2007. The circumstances are as follows:

13 1996 conviction

14 14. On or about November 3, 1995, at about 2:55 a.m., California
15 Highway Patrol Officer T. Chavez observed a vehicle weaving. He activated his
16 emergency lights and the vehicle stopped. Respondent was identified via a California
17 driver's license. Officer Chavez spoke to respondent, and smelled an odor of alcohol. She
18 admitted that she had two alcoholic drinks prior to the time she was stopped. Respondent
19 was unable to successfully perform a series of field sobriety tests, and she was arrested for
20 violating Vehicle Code section 23152(a), driving under the influence of alcohol or drugs.
21 Respondent voluntarily submitted to a breath test. The results were .07%/.07% .

22 15. On or about January 4, 1996, respondent was convicted on her plea
23 of guilty to violating Vehicle Code section 23103, reckless driving. She was placed on
24 three years court probation, ordered to pay fines, and enroll in a First Offender Alcohol
25 program within thirty days, and to complete the program. She was also ordered not to
26 drive with any alcohol in her system.

27 2001 conviction

28 16. On or about March 3, 2001, at about 2:10 a.m., California Highway

patrol Officers Nave and Dacier received a call to respond to a report of a driver possibly under the influence of alcohol or drugs. Officer Morris observed respondent driving erratically, and had stopped the vehicle. Respondent was identified via her California driver's license. Officer Nave spoke with respondent, and smelled a strong odor of alcohol on her person. He observed that her eyes were extremely bloodshot. She admitted that she had one alcoholic drink that night. He asked respondent to exit her vehicle, and observed that she was very unsteady and swayed. He asked her to perform field sobriety tests, which she was unable to do. Based on his observations and her inability to complete the tests, respondent was arrested for violating Vehicle Code section 23152(a), driving under the influence of alcohol or drugs. She chose to take a breath test, and the results indicated .13% and .11% breath alcohol. The arresting officer forwarded the report to the Alameda County District Attorney for prosecution of violating Vehicle Code section 23152(a), driving under the influence of alcohol or drugs and Vehicle Code section 23152(b), driving with a blood or breath alcohol level .08% or higher.

17. On or about April 2, 2001, respondent was convicted of violating Vehicle Code section 23152(a), driving under the influence of alcohol or drugs with one prior conviction. Imposition of sentence was suspended for sixty months, and she was placed on summary formal probation for sixty months on terms and conditions that she serve ten days in county jail. She was allowed to report to the Sheriff's alternative to jail weekender work program to serve the time. She was ordered to pay fines, and her driver's license was restricted for one year concurrent with a Department of Motor Vehicles suspension.

2007 conviction

18. On or about December 11, 2006, at about 11:31 p.m., the Modesto Police Department investigated a report of a driver under the influence of drugs and/or alcohol. The driver was identified as respondent by her California driver's license. After investigation, respondent was arrested for violating Vehicle Code section 23152(a), driving under the influence of alcohol or drugs; Vehicle Code section 23152(b), driving

1 with a blood or breath alcohol level .08% or higher and Vehicle Code section 23103(a),
2 reckless driving.

3 19. On or about March 14, 2007, respondent was convicted on her plea
4 of nolo contendere to a misdemeanor violation of Vehicle Code section 23152(a), driving
5 under the influence of alcohol or drugs. The other charges were dismissed. She admitted
6 the prior 2001 conviction, and a special allegation of .17% blood or breath alcohol level
7 was included. She was placed on thirty six months informal probation and sentenced to
8 thirty five days in county jail with two days credit for time served. She was ordered to pay
9 fines and attend and complete a drinking drivers program level two.

10 20. Therefore, respondent's license application is subject to denial
11 based on her three alcohol-related convictions, which are substantially related to the
12 practice of respiratory care.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters
15 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

16 1. Denying the application of Marcia Anne Sierra for a respiratory care
17 practitioner license;

18 2. Directing Marcia Anne Sierra to pay the Respiratory Care Board of
19 California the costs of the investigation and enforcement of this case, and if placed on
20 probation, the costs of probation monitoring;

21 3. Taking such other and further action as deemed necessary and
22 proper.

23 DATED: January 15, 2008

24 Original signed by Liane Zimmerman for:
25 STEPHANIE NUNEZ
26 Executive Officer
27 Respiratory Care Board of California
28 Department of Consumer Affairs
State of California
Complainant